

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
DF-46 (REV 02/15)

Fiscal Year 2016/17	Business Unit 7350	Department Industrial Relations	Priority No. 6
Budget Request Name 7350-009-BCP-DP-2016-GB		Program 6090 – DIVISION OF WORKERS' COMPENSATION 6105 – DIVISION OF LABOR STANDARDS ENFORCEMENT	Subprogram VARIOUS

Budget Request Description
Enhanced Enforcement & Compliance (2015 Legislation)

Budget Request Summary

The Department of Industrial Relations requests 33.5 positions and \$5.970 million in 2016/17, 28.5 positions and \$4.494 million in 2017/18, with 22.5 positions and \$3.475 million ongoing to fulfill the provisions of recently chaptered legislation:

AB 219 (Chapter 739/2015) AB 1509 (Chapter 792/2015)
AB 438 (Chapter 515/2015) AB 1513 (Chapter 754/2015)
AB 621 (Chapter 741/2015) SB 350 (Chapter 547/2015)
AB 970 (Chapter 783/2015) SB 358 (Chapter 546, 2015)
AB 1124 (Chapter 525/2015) SB 588 (Chapter 803/2015)

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed
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Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date
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For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

☐ FSR ☐ SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? ☐ Yes ☐ No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By <i>Karen Swame</i>	Date <i>12/24/15</i>	Reviewed By <i>[Signature]</i>	Date <i>12/24/15</i>
Department Director <i>[Signature]</i>	Date <i>12/24/2015</i>	Agency Secretary <i>[Signature]</i>	Date <i>1.4.16</i>

Department of Finance Use Only

Additional Review: ☐ Capital Outlay ☐ ITCU ☐ FSCU ☐ OSAE ☐ CALSTARS ☐ Dept. of Technology

BCP Type: ☐ Policy ☐ Workload Budget per Government Code 13308.05

PPBA <i>[Signature]</i>	Date submitted to the Legislature <i>1/7/16</i>
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Analysis of Problem

A. Budget Request Summary

The Department of Industrial Relations (DIR) requests 33.5 positions and \$5.970 million in Fiscal Year (FY) 2016/17, 28.5 positions and \$4.494 million in FY 2017/2018 and 22.5 positions and \$3.475 million on-going to assist DIR and its Division of Workers' Compensation (DWC) and Division of Labor Standards Enforcement (DLSE) in fulfilling the provisions of recently chaptered legislation: Assembly Bill (AB) 219 (Chapter 739/2015), AB 438 (Chapter 515/2015), AB 621 (Chapter 741/2015), AB 970 (Chapter 783/2015), AB 1124 (Chapter 525/2015), AB 1509 (Chapter 792/2015), AB 1513 (Chapter 754/2015), Senate Bill (SB) 350 (Chapter 547/2015), SB 358 (Chapter 546/2015), and SB 588 (Chapter 803/2015).

B. Background/History

DWC monitors the administration of workers' compensation claims, and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. DWC's mission is to minimize the adverse impact of work related injuries on California employees and employers.

DLSE provides essential services for California workers and employers, including adjudication of wage claims, inspection of workspaces for labor law compliance, enforcement of prevailing wage rates and apprenticeship standards in public works projects, licensing and registration of business, investigations of retaliation complaints, and education of the public on labor laws. Enforcement efforts help ensure workers receive wages due pursuant to California wage law; level the playing field for law abiding employers; and, via fines and penalties, result in annual revenue to the General Fund and other special funds.

Please see attachments for additional information and background/history detail specific to each bill.

C. State Level Considerations

None

D. Justification

Division of Workers' Compensation (DWC)

Additional resources are necessary for new legislative mandates that require: 1) the translation of forms into additional languages allowing access to injured workers who are non-English speakers to the services and benefits administered by DWC and; 2) the establishment and administration of a workers' compensation drug formulary for medications prescribed in the workers' compensation system.

Division of Labor Standards Enforcement (DLSE)

Additional resources are necessary for various new legislative mandates that: 1) expanded the definition of what constitutes public works, requiring the payment of prevailing wages; 2) established amnesty programs allowing employers to enter into settlement agreements to resolve wage and misclassification disputes; 3) gave DLSE statutory authority to cite for violations of local wage law and failure to reimburse employees for business expenses; 4) increased employees' retaliation protections at work and; 5) enhanced DLSE's ability to recover unpaid wages on the behalf of workers.

Approval of this request will help ensure that existing enforcement required by law does not deteriorate and ultimately impair the department's ability to enforce labor law. The positions and associated funding are critical to DIR operations.

Please see attachments for additional information and justification specific to each bill.

Analysis of Problem

E. Outcomes and Accountability

This proposal will enable DIR to implement the provisions and fulfill the intent of recently chaptered legislation. See workload attachments for additional activities anticipated for each bill.

F. Analysis of All Feasible Alternatives

1. Do nothing.

Pro: DIR sees no positive outcome for this alternative.

Con: This action will hinder the department's ability to provide the necessary labor law enforcement and implement other mandates as required by legislation.

2. Redirect resources from other DWC and DLSE programs.

Pro: This alternative will enable DIR to implement provisions and fulfill the intent of the legislation.

Con: Redirecting resources will create deficiencies in other DWC and DLSE program areas.

3. Provide authorization for 33.5 positions and \$5.970 million in FY 2016/17, 28.5 positions and \$4.494 million in FY 2017/2018 and 22.5 positions and \$3.475 million on-going.

Pro: This alternative will enable DIR to implement provisions and fulfill the intent of the legislation.

Con: DIR sees no negative aspect of this alternative.

G. Implementation Plan

Begin hiring process July 1, 2016

H. Supplemental Information

None

I. Recommendation

Approve this proposal with funding from the Workers' Compensation Administration Revolving Fund (0223), State Public Works Enforcement Fund (3150) and Labor Enforcement & Compliance Fund (3152) to fulfill the provisions of recently chaptered legislation and implement mandates and perform various enforcement and regulatory activities relative to the DWC and DLSE. Fund Condition Statements attached.

DEPARTMENT OF INDUSTRIAL RELATIONS
FISCAL YEAR 2016-17 BUDGET CHANGE PROPOSAL
FUND CONDITION STATEMENT
(dollars in thousands)

	Actual 2013-14	Actual 2014-15	Projected 2015-16	Projected 2016-17	Projected 2017-18	Projected 2018-19
0223 Workers' Compensation Administration Revolving Fund						
BEGINNING BALANCE	\$190,100	\$281,312	\$349,729	\$165,950	\$220,961	\$222,238
Prior year adjustments	1,339	1,725	-	-	-	-
Balance, Adjusted	<u>191,439</u>	<u>283,037</u>	<u>349,729</u>	<u>165,950</u>	<u>220,961</u>	<u>222,238</u>
REVENUES AND TRANSFERS						
Revenues:						
4129200 Other Regulatory Fees	265,421	251,291	130,408	368,980	314,859	316,263
4129400 Other Regulatory Licenses and Permits	1,115	1,360	1,226	1,226	1,226	1,226
4163000 Investment Income - Surplus Money Investments	266	551	500	500	500	500
4171400 Escheat - Unclaimed Checks, Warrants, Bonds, and Coupons	1	4	5	5	5	5
4172500 Miscellaneous Revenue	-	-	-	-	-	-
4173000 Penalty Assessments Other	2,859	1,064	1,278	1,278	1,278	1,278
4173500 Settlements and Judgments	-	55	-	-	-	-
	<u>269,662</u>	<u>254,325</u>	<u>133,417</u>	<u>371,989</u>	<u>317,868</u>	<u>319,272</u>
Total Revenues, Transfers, and Other Adjustments	269,662	254,325	133,417	371,989	317,868	319,272
Totals, Resources	<u>461,101</u>	<u>537,362</u>	<u>483,146</u>	<u>537,939</u>	<u>538,829</u>	<u>541,510</u>
EXPENDITURES AND EXPENDITURE ADJUSTMENTS						
Disbursements:						
0840 State Controller (State Operations)	15	-	-	-	-	-
7350 Department of Industrial Relations (State Operations)	179,009	187,376	316,960	315,158	315,158	315,158
16/17 BCP - Enhanced Enforcement & Compliance (2015 Legislation)	-	-	-	1,820	1,433	1,433
8880 Fiscal System & Consulting Assessment (FSCU)	765	255	236	-	-	-
	<u>179,789</u>	<u>187,631</u>	<u>317,196</u>	<u>316,978</u>	<u>316,591</u>	<u>316,591</u>
TOTAL EXPENDITURES AND EXPENDITURE ADJUSTMENTS	179,789	187,631	317,196	316,978	316,591	316,591
FUND BALANCE	<u>\$281,312</u>	<u>\$349,731</u>	<u>\$165,950</u>	<u>\$220,961</u>	<u>\$222,238</u>	<u>\$224,919</u>
Reserve for economic uncertainties	281,312	349,731	165,950	220,961	222,238	224,919

Enhanced Enforcement and Compliance (2015 Legislation)

DEPARTMENT OF INDUSTRIAL RELATIONS
FISCAL YEAR 2016-17 BUDGET CHANGE PROPOSAL
FUND CONDITION STATEMENT
(dollars in thousands)

	Actual 2013-14	Actual 2014-15	Estimated 2015-16	Projected 2016-17	Projected 2017-18	Projected 2018-19
3150 State Public Works Enforcement Fund						
BEGINNING BALANCE	\$2,363	\$7,337	\$5,533	\$1,737	\$0	\$0
Prior year adjustments	-13	-44	-	-	-	-
Adjusted Beginning Balance	<u>2,350</u>	<u>7,293</u>	<u>5,533</u>	<u>1,737</u>	<u>-</u>	<u>-</u>
REVENUES AND TRANSFERS						
Revenues:						
4129200 Other Regulatory Fees	753	8,054	8,054	11,260	12,989	12,989
4163000 Investment Income - Surplus Money Investments	6	15	10	10	10	10
Transfers:						
Loan from Fund 0096 per Labor Code Section 62.8	<u>5,000</u>					
Total Revenues and Transfers	<u>5,759</u>	<u>8,069</u>	<u>8,064</u>	<u>11,270</u>	<u>12,999</u>	<u>12,999</u>
Total Resources	<u>8,109</u>	<u>15,362</u>	<u>13,597</u>	<u>13,007</u>	<u>12,999</u>	<u>12,999</u>
EXPENDITURES AND EXPENDITURE ADJUSTMENTS						
Expenditures:						
7350 Department of Industrial Relations (State Operations)	772	9,829	11,860	12,874	12,874	12,874
16/17 BCP - Enhanced Enforcement & Compliance (2015 Legislation)				133	125	125
Total Expenditures	<u>772</u>	<u>9,829</u>	<u>11,860</u>	<u>13,007</u>	<u>12,999</u>	<u>12,999</u>
FUND BALANCE	<u>\$7,337</u>	<u>\$5,533</u>	<u>\$1,737</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
Reserve for economic uncertainties	7,337	5,533	1,737	-	-	-

Enhanced Enforcement and Compliance (2015 Legislation)

DEPARTMENT OF INDUSTRIAL RELATIONS
FISCAL YEAR 2016-17 BUDGET CHANGE PROPOSAL
FUND CONDITION STATEMENT
(dollars in thousands)

	Actual 2013-14	Actual 2014-15	Estimated 2015-16	Projected 2016-17	Projected 2017-18	Projected 2018-19
3152 Labor Enforcement and Compliance Fund						
BEGINNING BALANCE	\$23,193	\$32,331	\$36,487	\$24,595	\$26,707	\$25,671
Prior year adjustments	313	301	-	-	-	-
Adjusted Beginning Balance	23,506	32,632	36,487	24,595	26,707	25,671
REVENUES AND TRANSFERS						
Revenues:						
4121800 Employment Agency Filing Fees	-	-	-	120	120	120
4122000 Employment Agency License Fees	-	-	-	720	720	720
4129200 Other Regulatory Fees	50,380	47,067	33,899	55,388	51,125	50,089
4129400 Other Regulatory Licenses and Permits	-	-	-	90	90	90
4161000 Investment Income - Other	-	1	-	-	-	-
4163000 Investment Income - Surplus Money Investments	44	58	50	50	50	50
4173000 Penalty Assessments - Other	374	425	270	270	270	270
Transfers:						
Revenue Transfer from Fund 0216 Per Chapter 28, Statutes of 2013	1,235					
Loan Repayment from Fund 3204		250				
Revenue Transfer from Fund 3204 per pending legislation				194		
Revenue Transfer from Fund 3242 per pending legislation				4		
Total Revenues and Transfers	52,033	47,801	34,219	56,836	52,375	51,339
Total Resources	75,539	80,433	70,706	81,431	79,082	77,010
EXPENDITURES AND EXPENDITURE ADJUSTMENTS						
Expenditures:						
0840 State Controller (State Operations)	2	-	-	-	-	-
7350 Department of Industrial Relations (State Operations)	43,206	43,946	46,110	45,639	45,639	45,639
16/17 BCP - DLSE Resources				4,988	4,756	3,703
16/17 BCP - Revenue & Expenditure Alignment for Various Special Funds				80	80	80
16/17 BCP - Enhanced Enforcement & Compliance (2015 Legislation)				4,017	2,936	1,917
8880 Financial Information System for California (State Operations)	-	-	1	-	-	-
Total Expenditures	43,208	43,946	46,111	54,724	53,411	51,339
FUND BALANCE	\$32,331	\$36,487	\$24,595	\$26,707	\$25,671	\$25,671
Reserve for economic uncertainties	32,331	36,487	24,595	26,707	25,671	25,671

Enhanced Enforcement and Compliance (2015 Legislation)

Department of Industrial Relations
FY 2016/17 Budget Change Proposal
Enhanced Enforcement & Compliance (2015 Legislation)
Fiscal Summary

	Division of Workers' Compensation (DWC)						Division of Labor Standards Enforcement (DLSE)																		Grand Totals			
	Translation of Materials		Drug Formulary for Workers' Compensation System		DWC Totals		Public Works: Ready-Mixed Concrete Delivery		Motor Carrier Amnesty Program		Reimbursable Expenses Enforcement		Piece-Rate Compensation		Public Works: Clean Energy & Pollution Reduction Act of 2015		Retaliation: Gender Wage Differential & Protected Disclosures and Complaints		Nonpayment of Wages & Judgment Enforcement		DLSE Totals							
	AB 438		AB 1124				AB 219		AB 621		AB 970		AB 1513		SB 350		SB 358 & AB 1509		SB 588									
	Pos	\$	Pos	\$	Pos	\$	Pos	\$	Pos	\$	Pos	\$	Pos	\$	Pos	\$	Pos	\$	Pos	\$	Pos	\$	Pos	\$	Pos	\$		
Division of Workers' Compensation																												
Industrial Relations Counsel III-Spec (6180)			1.0	110,000	1.0	110,000																		1.0	110,000			
Division of Labor Standards Enforcement																												
Industrial Relations Counsel III-Spec (6180)																							3.0	330,000	3.0	330,000	3.0	330,000
Deputy Labor Commissioner II (9536)																						1.5	108,000	1.5	108,000	1.5	108,000	
Deputy Labor Commissioner I (9502)																						6.0	374,000	15.0	934,000	15.0	934,000	
Research Program Specialist I-Economics (5830)																						1.0	68,000	1.0	68,000	1.0	68,000	
Legal Secretary (1282)																						1.0	44,000	1.0	44,000	1.0	44,000	
Office Technician-Typing (1139)																						1.5	57,000	4.0	152,000	4.0	152,000	
Temp Help																								40,000	0.0	40,000		
Division of Administration																												
Industrial Relations Counsel IV (5981)																								1.0	122,000	1.0	122,000	
Staff Services Manager I (4800)			1.0	72,000	1.0	72,000																		1.0	72,000	1.0	72,000	
Associate Governmental Program Analyst (5393)			3.0	186,000	3.0	186,000								1.0	62,000									1.0	62,000	4.0	248,000	
Staff Services Analyst-General (5157)			0.5	23,000	0.5	23,000																		0.5	23,000	1.0	46,000	
Temp Help										0.5	23,000														60,000	0.0	60,000	
Total Salaries & Wages	0.0	\$0	5.5	\$391,000	5.5	\$391,000	1.0	\$62,000	5.5	\$335,000	1.0	\$62,000	1.0	\$62,000	5.5	\$447,000	1.0	\$62,000	13.0	\$913,000	28.0	\$1,943,000	33.5	\$2,334,000	33.5	\$2,334,000		
Staff Benefits		0		209,000		209,000		35,000		169,000		29,000		32,000		173,000		34,000		474,000		946,000		1,155,000		1,155,000		
Total Personal Services	0.0	\$0	5.5	\$600,000	5.5	\$600,000	1.0	\$97,000	5.5	\$504,000	1.0	\$91,000	1.0	\$94,000	5.5	\$620,000	1.0	\$96,000	13.0	\$1,387,000	28.0	\$2,889,000	33.5	\$3,489,000	33.5	\$3,489,000		
Operating Expenses		0		151,000		151,000		28,000		412,000		28,000		15,000		152,000		28,000		359,000		1,022,000		1,173,000		1,173,000		
Consultant & Professional Services		175,000		850,000		1,025,000		0		0		0		0		0		0		0		0		1,025,000		1,025,000		
Equipment		0		44,000		44,000		8,000		44,000		8,000		8,000		44,000		8,000		119,000		239,000		283,000		283,000		
Distributed Administration		[175,000]	[4.5]	[1,440,000]	[4.5]	[1,615,000]		0	[0.5]	[53,000]		0	[1.0]	[117,000]	[1.0]	[276,000]		0	[2.5]	[446,000]		[7.0]	[2,061,000]		[7.0]	[2,061,000]		
Total Operating Expenses & Equipment		\$175,000		\$1,045,000		\$1,220,000		\$36,000		\$456,000		\$36,000		\$23,000		\$196,000		\$36,000		\$478,000		\$1,261,000		\$2,481,000		\$2,481,000		
Total FY 2016/17	0.0	\$175,000	5.5	\$1,645,000	5.5	\$1,820,000	1.0	\$133,000	5.5	\$960,000	1.0	\$127,000	1.0	\$117,000	5.5	\$816,000	1.0	\$132,000	13.0	\$1,865,000	28.0	\$4,150,000	33.5	\$5,970,000	33.5	\$5,970,000		
Total FY 2016/17 by Fund	0.0	\$175,000	5.5	\$1,645,000	5.5	\$1,820,000	1.0	\$133,000	5.5	\$960,000	1.0	\$127,000	1.0	\$117,000	5.5	\$816,000	1.0	\$132,000	13.0	\$1,865,000	28.0	\$4,150,000	33.5	\$5,970,000	33.5	\$5,970,000		
Workers' Compensation Admin Revolving Fund-0223		175,000	5.5	1,645,000	5.5	1,820,000																						
State Public Works Enforcement Fund-3150							1.0	133,000																				
Labor Enforcement & Compliance Fund-3152								5.5	960,000	1.0	127,000	1.0	117,000	5.5	816,000	1.0	132,000	13.0	1,865,000	26.0	4,017,000			26.0	4,017,000			
Less One-Times/Expiring Positions		-175,000		-212,000	0.0	-387,000		-8,000	-4.0	-790,000		-8,000	-1.0	-117,000		-43,000		-8,000		-115,000	-5.0	-1,089,000	-5.0	-1,476,000	-5.0	-1,476,000		
Total FY 2017/18	0.0	\$0	5.5	\$1,433,000	5.5	\$1,433,000	1.0	\$125,000	1.5	\$170,000	1.0	\$119,000	0.0	\$0	5.5	\$773,000	1.0	\$124,000	13.0	\$1,750,000	23.0	\$3,061,000	28.5	\$4,494,000	28.5	\$4,494,000		
Less One-Times/Expiring Positions					0.0	0																						
Total FY 2018/19	0.0	\$0	5.5	\$1,433,000	5.5	\$1,433,000	1.0	\$125,000	1.5	\$170,000	1.0	\$119,000	0.0	\$0	3.5	\$434,000	1.0	\$124,000	9.0	\$1,070,000	17.0	\$2,042,000	22.5	\$3,475,000	22.5	\$3,475,000		

BCP Fiscal Detail Sheet

BCP Title: Enhanced Enforcement and Compliance (2015 Legislation)

DP Name: 7350-009-BCP-DP-2016-GB

Budget Request Summary

FY16

	CY	BY	BY+1	BY+2	BY+3	BY+4
Positions - Permanent	0.0	33.5	28.5	22.5	22.5	22.5
Total Positions	0.0	33.5	28.5	22.5	22.5	22.5
Salaries and Wages						
Earnings - Permanent	0	2,234	1,922	1,358	1,358	1,358
Earnings - Temporary Help	0	100	100	100	100	100
Total Salaries and Wages	\$0	\$2,334	\$2,022	\$1,458	\$1,458	\$1,458
Total Staff Benefits	0	1,155	997	709	709	709
Total Personal Services	\$0	\$3,489	\$3,019	\$2,167	\$2,167	\$2,167
Operating Expenses and Equipment						
5301 - General Expense	0	54	46	36	36	36
5302 - Printing	0	28	24	18	18	18
5304 - Communications	0	36	31	25	25	25
5306 - Postage	0	54	46	36	36	36
5320 - Travel: In-State	0	77	65	52	52	52
5322 - Training	0	2	2	2	2	2
5324 - Facilities Operation	0	417	366	288	288	288
5340 - Consulting and Professional Services - External	0	1,025	680	680	680	680
5344 - Consolidated Data Centers	0	112	95	75	75	75
5346 - Information Technology	0	393	113	89	89	89
5368 - Non-Capital Asset Purchases - Equipment	0	283	7	7	7	7
Total Operating Expenses and Equipment	\$0	\$2,481	\$1,475	\$1,308	\$1,308	\$1,308
Total Budget Request	\$0	\$5,970	\$4,494	\$3,475	\$3,475	\$3,475
Fund Summary						
Fund Source - State Operations						
0223 - Workers Compensation Administration Revolving Fund	0	1,820	1,433	1,433	1,433	1,433
3150 - State Public Works Enforcement Fund	0	133	125	125	125	125
3152 - Labor Enforcement and Compliance Fund	0	4,017	2,936	1,917	1,917	1,917
Total State Operations Expenditures	\$0	\$5,970	\$4,494	\$3,475	\$3,475	\$3,475
Total All Funds	\$0	\$5,970	\$4,494	\$3,475	\$3,475	\$3,475

Program Summary

Program Funding

6090 - Division of Workers' Compensation	0	1,820	1,433	1,433	1,433	1,433
6105005 - Labor Standards Enforcement Program	0	4,150	3,061	2,042	2,042	2,042
9900100 - Administration	0	2,061	1,553	1,345	1,345	1,345
9900200 - Administration - Distributed	0	-2,061	-1,553	-1,345	-1,345	-1,345
Total All Programs	\$0	\$5,970	\$4,494	\$3,475	\$3,475	\$3,475

Personal Services Details

Positions	Salary Information			CY	BY	BY+1	BY+2	BY+3	BY+4
	Min	Mid	Max						
1139 - Office Techn (Typing)				0.0	4.0	4.0	4.0	4.0	4.0
1282 - Legal Secty				0.0	1.0	1.0	0.0	0.0	0.0
4800 - Staff Svcs Mgr I				0.0	1.0	1.0	1.0	1.0	1.0
5157 - Staff Svcs Analyst (Gen)				0.0	1.0	1.0	1.0	1.0	1.0
5393 - Assoc Govtl Program Analyst				0.0	4.0	3.0	3.0	3.0	3.0
5830 - Research Program Spec I				0.0	1.0	1.0	0.0	0.0	0.0
5981 - Industrial Relations Counsel IV				0.0	1.0	1.0	0.0	0.0	0.0
6180 - Industrial Relations Counsel III (Spec)				0.0	4.0	4.0	1.0	1.0	1.0
9502 - Dep Labor Commissioner I				0.0	15.0	11.0	11.0	11.0	11.0
9536 - Dep Labor Commissioner II				0.0	1.5	1.5	1.5	1.5	1.5
TH00 - Temporary Help				0.0	0.0	0.0	0.0	0.0	0.0
Total Positions				0.0	33.5	28.5	22.5	22.5	22.5

Salaries and Wages	CY	BY	BY+1	BY+2	BY+3	BY+4
1139 - Office Techn (Typing)	0	152	152	152	152	152
1282 - Legal Secty	0	44	44	0	0	0
4800 - Staff Svcs Mgr I	0	72	72	72	72	72
5157 - Staff Svcs Analyst (Gen)	0	46	46	46	46	46
5393 - Assoc Govtl Program Analyst	0	248	186	186	186	186
5830 - Research Program Spec I	0	68	68	0	0	0
5981 - Industrial Relations Counsel IV	0	122	122	0	0	0
6180 - Industrial Relations Counsel III (Spec)	0	440	440	110	110	110
9502 - Dep Labor Commissioner I	0	934	684	684	684	684
9536 - Dep Labor Commissioner II	0	108	108	108	108	108
TH00 - Temporary Help	0	100	100	100	100	100
Total Salaries and Wages	\$0	\$2,334	\$2,022	\$1,458	\$1,458	\$1,458

Staff Benefits	CY	BY	BY+1	BY+2	BY+3	BY+4
5150350 - Health Insurance	0	175	159	112	112	112
5150600 - Retirement - General	0	565	487	344	344	344
5150900 - Staff Benefits - Other	0	415	351	253	253	253
Total Staff Benefits	\$0	\$1,155	\$997	\$709	\$709	\$709

Total Personal Services

\$0	\$3,489	\$3,019	\$2,167	\$2,167	\$2,167
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DEPARTMENT OF INDUSTRIAL RELATIONS

2016-17 BUDGET CHANGE PROPOSAL

Title: AB 219: Public Works Ready-Mixed Concrete Delivery			
Division: Division of Labor Standards Enforcement			
Fiscal Year	<u>15/16</u>	<u>16/17</u>	<u>17/18</u>
Requested Dollars	\$0	\$133,000	\$125,000
No. of Positions	0.0	1.0	1.0

BUDGET REQUEST SUMMARY

The Department of Industrial Relations (DIR) requests an augmentation of \$133,000 and 1.0 Deputy Labor Commissioner I in Fiscal Year 2016/17 (\$125,000 ongoing) to implement the requirements of Assembly Bill (AB) 219 (Chapter 739, Statutes of 2015).

BACKGROUND/HISTORY

Within DIR, the Division of Labor Standards Enforcement's (DLSE) Public Works unit investigates complaints concerning Public Works and Prevailing Wage Laws in California, reviews certified payroll records, issues civil wage and penalty assessments, and verifies that employer payments are properly made to a third party plan, fund or program. The DLSE also assures that the proper classifications were used and the appropriate wage rates paid.

Under current provisions, workers employed by contractors or subcontractors in the execution of a public works contract must be paid prevailing wage rates (Labor Code sections 1771, 1772 and 1774). AB 219 expands the definition of "public works" under the California Prevailing Wage Law (CPWL) to include "the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state." The amendments only apply to contracts awarded on or after July 1, 2016.

STATE LEVEL CONSIDERATIONS

The legislation is not anticipated to affect any other state departments.

JUSTIFICATION

AB 219 adds section 1720.9 to the Labor Code to specify that the definition of "public works" for purposes of the CPWL includes "the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state." AB 219 overturns current law and practice on this issue, as applied to materials suppliers.

The bill addresses concerns about what constitutes the "delivery" of ready-mixed concrete (i.e. would the term "delivery" include time spent by workers picking up the material from the supplier, driving time, waiting time, etc.) and provides clarity as to the nature of the job duties that would be covered.

The bill also specifies that the applicable prevailing wage rate shall be the current prevailing wage, as determined by the director of DIR, for the geographic area in which the factory or batching plant is

located. This addresses questions that would have arisen about which prevailing wage rate applied when the factory or batching plant was located in a different county or other zone – for purposes of determining the applicable prevailing wage – from the public works site.

AB 219 requires that the entity hauling or delivering ready-mixed concrete enter into a written subcontract requiring compliance with the prevailing wage laws. In addition, the bill requires the entity hauling or delivering ready-mixed concrete to submit certified payroll records, as required by Labor Code section 1776(a), to the party that engaged the entity and to the general contractor within three working days after the employee has been paid, accompanied by a written time record certified by each driver.

There will certainly be increased costs associated with enforcing the CPWL for workers hauling and delivering ready-mixed concrete to public works sites. During Fiscal Year 2014/15, there were 540 complaints filed in classifications frequently associated with concrete hauling. The DLSE estimates that the provisions of AB 219 will increase these complaints by 10%, requiring an additional 54 Public Works investigations annually. The Department requests an additional Deputy Labor Commissioner I for DLSE's Public Works unit to enforce the provisions of AB 219. See attached workload.

OUTCOMES AND ACCOUNTABILITY

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Public Works Investigations Pursuant to AB 219		54	54	54	54	54

REVENUE SOURCE FOR REQUEST

State Public Works Enforcement Fund (Fund 3150)

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Public Works
 Workload Data - AB 219

Deputy Labor Commissioner I

Activity	Projected Hours Per Activity in 2016	Projected Workload		
		Increased Activity		
		AB 219	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Public Works Investigations	40.00	54	2,160	
Total Increased Activity	40.00	54	2,160	1.0

DEPARTMENT OF INDUSTRIAL RELATIONS

2016-17 BUDGET CHANGE PROPOSAL

Title: AB 438: Translation of Materials			
Division: Office of the Director and the Division of Workers' Compensation			
Fiscal Year	<u>15/16</u>	<u>16/17</u>	<u>17/18</u>
Requested Dollars	\$0	\$175,000	\$0
No. of Positions	0.0	0.0	0.0

BUDGET REQUEST SUMMARY

The Department of Industrial Relations (DIR) requests one-time contract funds of \$175,000 in Fiscal year 2016/17 to implement the requirements of Assembly Bill (AB) 438 (Chapter 515, Statutes of 2015).

BACKGROUND/HISTORY

California's workers' compensation system was established by the Legislature in 1913 and provides the exclusive remedy for industrial injuries, irrespective of the fault of the employee or employer. The workers' compensation system is administered by the Administrative Director of DIR's Division of Workers' Compensation (DWC) to compensate an employee for injuries sustained in the course of his or her employment. In administering and enforcing those provisions, existing law requires the division to protect the interests of injured workers and requires all forms and notices to be given to employees by the division to be in English and Spanish.

Assembly Bill 438 mandates DIR and DWC to make specified forms, notices, and fact sheets available in Chinese, Tagalog, Korean, and Vietnamese by January 1, 2018. The bill also requires the Administrative Director of DWC to make recommendations regarding any other documents that should be translated into languages other than English and requires the DIR and DWC to submit the recommendations and any translated documents to the Legislature.

This effort will improve access to workers' compensation benefits for injured workers with limited English proficiency. The forms and materials designated were identified as those which trigger obligations for employers to provide medical and indemnity benefits (i.e. the claim form), allow workers to claim return-to-work benefits (the voucher and supplemental application), and inform workers of their rights under the system (the fact sheets). Once the obligations have been triggered, it becomes the responsibility of the claims administrator to ensure that all benefits have been provided and paid.

All state agencies are subject to the Dymally-Alatorre Bilingual Services Act (Government Code sections 7290-7299.8) which requires state agencies to provide information and services in the non-English speaking language if the group comprises five (5) percent or more of the people served by the agency. According to the 2012-2013 Statewide Language Survey and Implementation Plan prepared by the California Department of Human Resources, while Spanish is certainly the most dominant non-English language, accounting for 11% of the total number of public contacts recorded by DWC, the four languages listed in the bill comprise the next largest language groups that require DWC services (although none meet the 5% threshold). Translating the listed forms and materials, and annually identifying additional forms that may need translation, positively reflects the State's

policies of ensuring that injured workers receive the full measure of workers' compensation benefits and proactively providing state services to all citizens, regardless of language differences.

This is a new requirement so there is no history of workload or outcomes.

STATE LEVEL CONSIDERATIONS

The Division of Workers' Compensation (DWC) monitors the administration of workers' compensation claims, and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. DWC's mission is to minimize the adverse impact of work related injuries on California employees and employers.

The translation of the forms into additional languages will provide greater access to injured workers who are non-English speakers to the services and benefits administered by DWC in DIR. In addition, the translation of workers' compensation forms will facilitate non-English speakers' navigation of the workers' compensation system.

JUSTIFICATION

AB 438 amends Labor Code section 124 to require DIR and DWC to make specified forms, notices, and fact sheets available in Chinese, Tagalog, Korean, and Vietnamese by January 1, 2018. AB 438 also requires the Administrative Director to make recommendations regarding any other documents that should be translated into languages other than English and requires the department and the division to submit the recommendations and any translated documents to the Legislature.

This effort will improve access to workers' compensation benefits for injured workers with limited English proficiency. California has the largest limited-English proficient population. Given the complexity of the workers' compensation system, it may prove exceedingly difficult for an injured worker to receive necessary benefits if the forms and information provided by the DWC are not in their primary language. This bill will close the language access gap and requires the DWC to conduct an annual review to determine if additional forms and materials should be translated.

OUTCOMES AND ACCOUNTABILITY

The resources requested in this BCP will allow DIR to fund the necessary expert contract for translation services required to accomplish the mandate of AB 438. Below, are the specific projected outcomes for the effort:

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Translation and posting of 3 forms (in 4 languages)		12				
Translation and posting of 8 fact sheets (in 4 languages)		32				
Translation and posting of the Injured Worker Guide (in 4 languages)		4				

REVENUE SOURCE FOR REQUEST

Workers' Compensation Administration Revolving Fund (Fund 0223)

DEPARTMENT OF INDUSTRIAL RELATIONS

2016-17 BUDGET CHANGE PROPOSAL

Title: AB 621: Motor Carrier Amnesty Program			
Division: Division of Labor Standards Enforcement			
Fiscal Year	<u>16/17</u>	<u>17/18</u>	<u>18/19</u>
Requested Dollars	\$960,000	\$170,000	\$170,000
No. of Positions	5.5	1.5	1.5

BUDGET REQUEST SUMMARY

The Department of Industrial Relations (DIR) requests \$960,000 in 2016/17 to support 5.0 Deputy Labor Commissioner I (DLC I) positions¹ and 0.5 Staff Services Analyst (SSA), with an augmentation of \$170,000 to support 1.0 DLC I and 0.5 SSA ongoing. These resources are necessary to implement the requirements of Assembly Bill (AB) 621 (Chapter 741, Statutes of 2015) which establishes the Motor Carrier Employer Amnesty Program.

BACKGROUND/HISTORY

The Division of Labor Standards Enforcement (DLSE), headed by the Labor Commissioner, is charged with the enforcement of California's Labor laws, including the investigation and adjudication of claims for failure to pay the minimum wage. Existing law provides that employees may seek redress for unpaid wages and penalties from the Labor Commissioner. Section 98 of the Labor Code provides the Labor Commissioner with authority to investigate and hear employee complaints in any action to recover wages, penalties, and other demands for compensation. In its Wage Claims Adjudication (WCA) unit, DLSE adjudicates individual wage claims of workers who file claims for non-payment of wages and other demands of compensation, including violations of Industrial Welfare Commission Orders, processing over 30,000 wage claims per year.

Prior to the deregulation of the trucking industry in the 1970s, most port drivers were employees of motor carrier companies. However, following deregulation, the industry largely shifted to a model where drivers were reclassified as "independent contractors" rather than employees so were deprived of certain rights and benefits that are conferred with "employee" status. Since 2011, DLSE has received over 500 wage complaints by drivers against motor carriers for wage theft violations related to misclassification. Additionally, DLSE has issued over 30 decisions, all but one in favor of the drivers, finding that they had been misclassified as independent contractors.

Under AB 621, port drayage companies will be provided an opportunity to voluntarily come forward to participate in a limited amnesty program by entering into a settlement agreement with the Labor Commissioner. This provides a common-sense compromise in allowing the parties to come together, rectify the situation, and move forward in a productive manner.

Under the terms of the settlement agreement, the motor carrier must agree to pay all wages and benefits owed to previously misclassified independent contractors, and all taxes owed to the state as a result of such misclassification. In addition, the company must agree to classify any present or future commercial drivers as employees. In exchange, a motor carrier that enters into such a settlement agreement will be relieved of liability for statutory or civil penalties based on previous misclassification of drivers.

¹ 4.0 of the 5.0 DLC I positions are requested on a one-year limited-term basis.

This program will help alleviate a large number of pending cases with DLSE as well as in the courts. The employer must enter into a settlement agreement with the Labor Commissioner by January 1, 2017 and would be responsible for paying all wages, benefits and taxes since the initial misclassification and verify that all future hires would be deemed "employees". The employer may be charged for the costs incurred by DLSE.

STATE LEVEL CONSIDERATIONS

AB 621 establishes the Motor Carrier Employer Amnesty program, to be administered by the Labor Commissioner and the Employment Development Department, a limited amnesty program with respect to the misclassification of port drivers.

JUSTIFICATION

There are approximately 180-200 motor carriers employing approximately 15,000 truck drivers servicing California's ports (approximately 75 drivers per company). To date, drivers have filed claims with DLSE's Wage Claim Adjudication unit against 50 of these companies. DLSE estimates that approximately 50% of these will express interest and approximately 10% will fully participate in the amnesty program. As such, it is reasonable to project receiving applications from approximately 20 motor carriers. In addition, DLSE estimates that 3 civil cases will be filed against employers who violate their settlement agreements. Based on these estimates, DLSE will require 5.0 DLC I positions (1.0 permanent), as well as, 0.5 of an SSA position to provide administrative support. As indicated in the chart below, the civil actions are expected to require ongoing work based on Labor Code section 2750.8(i). Workload justification is provided in Attachment I for 2016/17. Please see Attachment II for ongoing workload.

AB 621 also requires carriers to provide quarterly notice to the Labor Commissioner of any change in the classification status of a previously reclassified driver. DLSE expects to accept these notices via an online portal. In the division's experience, costs for online application programs range from \$120,000 to \$400,000. The cost for this program is expected to be approximately \$260,000.

The resources requested by the proposal will mitigate the challenges that the Division and industry face as a result of these cases and (1) ensure workers are properly classified and recoup owed wages and assured appropriate wages going forward; (2) provide a safe harbor for employers to reclassify workers as employees by reducing exposure to costly litigation and monetary penalties; and (3) benefit the state by reducing the administrative burdens on the DLSE while recouping unpaid unemployment insurance fund contributions.

OUTCOMES AND ACCOUNTABILITY

Projected Outcomes

Workload Measure	15-16	16-17	17-18	18-19	19-20	20-21
Application/Self-Audit Review	N/A	20	-	-	-	-
Civil Actions	N/A	-	3	3	3	3
Monitor Compliance on Reported Changes in Classification Status	N/A	-	100	100	100	100

REVENUE SOURCE FOR REQUEST

Labor Enforcement and Compliance Fund (Fund 3152)

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Wage Claim Adjudication
 Workload Data - AB 621 (2016/17)

Attachment I

Deputy Labor Commissioner I

Activity	Projected Hours Per Activity in 2016	Projected Workload		
		Increased Activity		
		AB 621	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Application/Self-Audit Review	450.00	20	9,000	
Total Increased Activity	450.00	20	9,000	5.0

Average number of drivers per company = 75 (200 companies/15,000 drivers)
 Average time to complete audit = 6 hours per driver (average of 4-8 hours per driver)
 Average total time required to review one application = 450 hours

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Wage Claim Adjudication
 Workload Data - AB 621 (2017/18 and ongoing)

Attachment II

Deputy Labor Commissioner I

Activity	Projected Workload			
	Projected Hours Per Activity in 2016	Increased Activity		
		AB 621	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Civil Actions	450.00	3	1,350	
Monitor Compliance / Follow-up Investigations on Reported Changes to Classification Status	3.00	100	300	
Total Increased Activity	453.00	103	1,650	1.0

DEPARTMENT OF INDUSTRIAL RELATIONS

2016-17 BUDGET CHANGE PROPOSAL

Title: AB 970: Reimbursable Expenses Enforcement			
Division: Division of Labor Standards Enforcement			
Fiscal Year	<u>15/16</u>	<u>16/17</u>	<u>17/18</u>
Requested Dollars	\$0	\$127,000	\$119,000
No. of Positions	0.0	1.0	1.0

BUDGET REQUEST SUMMARY

The Department of Industrial Relations (DIR) requests 1.0 Deputy Labor Commissioner I (DLC I) position and an augmentation of \$127,000 in FY 2016/17 and \$119,000 ongoing to support the Division of Labor Standards Enforcement (DLSE) efforts in the implementation of Assembly Bill (AB) 970 (Chapter 783, Statutes of 2015).

BACKGROUND/HISTORY

Existing law authorizes the Labor Commissioner to enforce laws related to wage violations, including violations of the minimum wage and recovery of unpaid reimbursable expenses. The Labor Commissioner typically enforces wage laws through three mechanisms: 1) the wage claim adjudication process initiated by an employee-filed wage claim, 2) a Labor Commissioner issued citation, and 3) a Labor Commissioner lawsuit filed in court. Existing law allows the Labor Commissioner to enforce statewide minimum wages through all three mechanisms, but limits enforcement of local minimum wages and recovery of unpaid reimbursable expenses to the Berman hearing process or a lawsuit, but not through a citation.

This bill gives the Labor Commissioner the necessary statutory authority to cite for violations of local wage law as well as for failure to reimburse or indemnify employees for business expenses – enhancing the Labor Commissioner's ability to enforce wage and hour laws to the fullest extent for all California workers.

Wage Claim Adjudication

DLSE's Wage Claim Adjudication (WCA) unit adjudicates individual wage claims of workers who file claims for non-payment of wages and other demands of compensation, including violations of Industrial Welfare Commission Orders (Labor Code section 98). Through the WCA unit, DLSE deputies hold informal conferences between employers and employees to resolve wage disputes. If a matter cannot be resolved at the informal conference, an administrative hearing is held to make a final determination on the claim based upon documents and testimony of the parties. If neither party appeals to the court for a trial de novo within a specified period, DLSE's order, decision, or award (ODA) becomes a final order which is referred to DLSE's collection unit to file a request for clerk's judgment. Upon entry of a clerk's judgment, the wage liability can be enforced and collected as a judgment. If either party appeals DLSE's ODA to the superior court, the matter is heard and determined by the court with a resulting judgment. DLSE's attorneys represent wage claimants where an employer files an appeal of DLSE's ODA in superior court and the claimant is unable to afford legal counsel.

Bureau of Field Enforcement

DLSE's Bureau of Field Enforcement (BOFE) is primarily responsible for administering and enforcing statutes and regulations within the jurisdiction of the division through field investigations (Labor Code section 90.5). The Labor Commissioner may prosecute all actions for the collection of wages, penalties and demands of persons who are financially unable to employ counsel (Labor Code section 98.3). Following an investigation, DLSE's Legal Unit may bring an action for recovery of wages, penalties, or injunctive relief after an employer fails to comply with the Labor Code provisions upon demand by BOFE.

BOFE may also issue citations and penalty assessments for violations of specific laws where a citation is authorized. A citation is subject to an administrative appeal and hearing before a DLSE hearing officer who issues a determination which is subject to review in the courts under a writ of mandate (Labor Code section 1197.1).

STATE LEVEL CONSIDERATIONS

N/A

JUSTIFICATION

The Labor Commissioner routinely issues citations for violations of state minimum wage and overtime laws. Given this, the impact of providing the Labor Commissioner authority to cite for violations of local minimum wage and overtime violations is restricted to a simple adjustment in the calculation of wages due to reflect the higher minimum wage. While these provisions of the bill are not expected to fiscally impact DLSE, it is possible that the new requirement for DLSE to enforce local wage and hours laws may lead to an increased number of investigations and/or claims.

The main cost driver of this bill is anticipated to be the section that gives the Labor Commissioner authority to issue citations for violations of Labor Code 2802, which provides that an employer shall indemnify their employees against losses incurred through the course of performing their job. Currently, aggrieved employees may seek relief through filing a wage claim under Labor Code section 98 which authorizes the Labor Commissioner to investigate employee complaints in any action to recover wages, penalties, and other demands for compensation. On average, WCA issues 543 ODAs annually for Labor Code section 2802 violations. Providing the Labor Commissioner with citation authority that allows BOFE deputies to cite for these violations during field investigations will streamline this process for employers, workers, and the Division.

However, issuing citations for violations of Labor Code section 2802 will require additional investigation time and is expected to generate additional workload for BOFE deputies. DLSE estimates that 120 citations will be issued by BOFE annually due to this bill. The amount of time required to issue a citation will vary depending on the factual complexity, and will involve auditing employer records, interviewing witnesses, and issuing subpoenas in addition to increased clerical duties for our support staff. Additional workload will also be generated for the division's hearing officers and legal unit since it is expected that 62 of these citations will be appealed by the employer.

DLSE is requesting a full DLC I rather than fractional positions which would be difficult to recruit. Please see attached workload justification. DLSE will absorb additional workload created by these added responsibilities at the Office Technician and DLC II levels.

OUTCOMES AND ACCOUNTABILITY

Until now the Labor Commissioner lacked the statutory authority to enforce violations of local minimum wage, overtime and recovery of unpaid reimbursable expenses laws through issuance of

citations. This bill will ensure that workers who work in counties and cities that have enacted local wage laws are able to benefit from the full enforcement power of the Labor Commissioner. Furthermore, this bill will streamline the process of recovering unpaid reimbursable expenses, avoiding lengthy delays for workers seeking to be made whole after theft of their wages.

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Labor Code 2802 Citations Issued	N/A	120	120	120	120	120
Labor Code 2802 Citation Appeals	N/A	62	62	62	62	62

REVENUE SOURCE FOR REQUEST

Labor Enforcement and Compliance Fund (Fund 3152)

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Bureau of Field Enforcement (BOFE)
 Workload Data - AB 970

Deputy Labor Commissioner I

Activity	Projected Hours Per Activity in 2016	Projected Workload**		
		Increased Activity		
		AB 970***	Associated Annual Hours *	Additional Staff Needed (1,776 hours per position)
<u>Deputy Labor Commissioner I</u> LC 2802 Citation Issuance - field enforcement, audit employer records, interview witnesses, issue subpoenas	8.00	120	960	
Total Increased Activity			960	1.0

- * This DLC I position will also help manage workload from one or a few other legislative items for which a DLC I position was requested but denied.
- ** BOFE citations for 2802 violations is a new activity for which there is no historical data to provide.
- *** The projected workload is based off the number of ODA's issued when these types of wage claims are brought to the Labor Commissioner.

DEPARTMENT OF INDUSTRIAL RELATIONS

2016-17 BUDGET CHANGE PROPOSAL

Title: AB 1124: Drug Formulary for CA Workers' Compensation System			
Division: Office of the Director and the Division of Workers' Compensation			
Fiscal Year	<u>15/16</u>	<u>16/17</u>	<u>17/18</u>
Requested Dollars	\$0	\$1,645,000	\$1,433,000
No. of Positions	0.0	5.5	5.5

BUDGET REQUEST SUMMARY

The Department of Industrial Relations (DIR) requests 1.0 Industrial Relations Counsel III (Specialist) position, 1.0 Staff Services Manager I position, 3.0 Associate Governmental Program Analyst positions, and 0.5 Staff Services Analyst (SSA) position for a total of 5.5 positions and an augmentation of \$1.645 million in 2016/17 and \$1.433 million ongoing to implement the requirements of Assembly Bill (AB) 1124 (Chapter 525, Statutes of 2015).

BACKGROUND/HISTORY

California has yet to adopt a workers' compensation formulary, nor has there been any prior legislation proposing a formulary. Per the legislation, the Administrative Director of the Division of Workers' Compensation (DWC) shall establish a drug formulary, on or before July 1, 2017, as part of the medical treatment utilization schedule, for medications prescribed in the workers' compensation system. The Administrative Director shall meet and consult with stakeholders, as specified, prior to the adoption of the formulary. The legislation requires DIR to publish two interim reports on the DIR website regarding status of the creation of the formulary through implementation. Quarterly updates are required to allow for the provision of all appropriate medications, including medications new to the market. The Administrative Director is also to establish an independent pharmacy and therapeutics committee to review and consult with the Administrative Director in connection with updating the formulary, as specified.

This is a new program per the recently chaptered legislation, so there is no resource and/or workload history.

STATE LEVEL CONSIDERATIONS

This proposal implements the requirements of AB 1124, and does not impact any other state department.

JUSTIFICATION

The bill is intended to address two critical issues within the workers' compensation system: escalating costs of pharmaceuticals and increasing use of opioids and other addictive medication. The adoption of an evidence-based drug formulary is expected to positively affect the quality of health care provided to injured workers while simultaneously reducing costs to employers.

The bill contains provisions to ensure a transparent and timely process for the development of the drug formulary. It requires the administrative director to meet and consult with the public prior to

adoption of the formulary. The bill also includes the establishment of a pharmacy and therapeutics committee, composed of knowledgeable physicians and pharmacists, to consult with the Administrative Director on evidence-based updates to the formulary. Staffing will be needed to prepare and submit regulations and rulemaking documents in regards to updates and changes to the formulary. Additional program support staff will also be needed for the administration and management of the formulary on an ongoing basis and 0.5 of an SSA position for administrative support. Please see attached workload justification.

OUTCOMES AND ACCOUNTABILITY

The projected outcomes of what will be accomplished with the contracts are as follows:

- a) Provide an implementation plan and design for a formulary for the California workers' compensation system.
- b) Provide a monitoring plan that includes key indicators and benchmarks to baseline and track for ongoing evaluation of the formulary implementation.
- c) Provide an analysis of the costs and benefits of implementing an evidence-based drug formulary in the California Workers' Compensation system consistent with the requirements of AB 1124.
- d) Provide an analysis that includes but is not be limited to the following scope of potential costs and benefits that could be associated with the implementation of an evidence-based drug formulary.

The contractor will also offer technical expertise on pharmaceuticals, strategy for outreach and education, and ongoing technical support for drug review/updates.

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Committee Meetings	N/A	As needed	As needed	As needed	As needed	As needed
Publishing interim reports	N/A	2	0	0	0	0
Updating the formulary (quarterly)	N/A	N/A	4	4	4	4
Develop implementation plan	N/A	1	0	0	0	0
Design formulary	N/A	1	0	0	0	0
Draft regulatory text	N/A	1	0	0	0	0
Rulemaking package	N/A	1	0	0	0	0
Produce economic analysis	N/A	1	0	0	0	0
Monitoring and evaluation reports	N/A	2	12	12	12	12

REVENUE SOURCE FOR REQUEST

Workers' Compensation Administration Revolving Fund (Fund 0223)

Department of Industrial Relations
Office of the Director
Workload Data - AB 1124

Associate Governmental Program Analyst

Activity	Hours Per Activity	Projected Workload*		
		Increased Activity		
		AB 1124	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Coordinate and publicize public meetings via website, newlines, social media (ongoing)	300	1	300	
Record the outcomes of the public meetings, synthesize information and submit summary to the Administrative Director (ongoing)	200	1	200	
Coordinate and track receipt of written comments to regulations during rulemaking process (ongoing)	180	1	180	
Maintain stakeholder information and coordinate correspondence for employers, insurers, private sector employee representatives, public sector employee representatives, treating physicians actively practicing medicine, pharmacists, pharmacy benefit managers, attorneys who represent applicants, and injured workers. (ongoing)	225	1	225	
Coordinate meetings for quarterly reviews, related findings, draft website and related materials, and facilitate dissemination/online posting of formulary updates. (ongoing)	300	1	300	
Coordinate and assist with establishment and convening of independent pharmacy and therapeutics committee to review and consult with the Administrative Director regarding the formulary (ongoing)	300	1	300	
Coordinate and manage the contracts with outside vendors for implementation of the formulary (ongoing)	275	1	275	
Process and track invoices and payments for the contracts (ongoing)	60	1	60	
Coordinate sharing of deliverables and appropriate follow up meetings for interim reporting and presentations (ongoing)	60	1	60	
Assist in identification of indicators and key metrics for ongoing data collection and analysis (ongoing)	300	1	300	
Assist in conducting a baseline study of key metrics for formulary assessment (ongoing)	600	1	600	
Monitor key metrics to evaluate progress over time, comparing against baseline measures when appropriate for analytical reporting purposes (ongoing)	450	1	450	
Submit high level analytical reports on key metrics at regular intervals for executive review (ongoing)	450	1	450	
Design and maintain database of all metrics related to the formulary (ongoing)	400	1	400	
Assist in developing strategic timeline for outreach and education activities and benchmarks, as well as target audiences and related materials (ongoing)	350	1	350	
Draft and maintain glossary of terms related to the formulary to post online (ongoing)	100	1	100	
Draft and maintain formulary landing page with all related resources appropriately linked and updated (ongoing)	120	1	120	
Coordinate internal review of all materials for public consumption prior to posting (ongoing)	100	1	100	
Ensure high quality in all materials prepared for public posting in coordination with DIR editors, website managers, and technical experts (ongoing)	105	1	105	
Use outlook and other reminder tools to ensure deadlines are met and appropriate review times are factored into material development (ongoing)	120	1	120	
Assist in the drafting of 2 interim reports for posting on the DIR website to include the status of the creation of the formulary and the implementation timeline and progress of the formulary (ongoing)	300	1	300	
Perform other related duties (ongoing)	100	1	100	
Total Increased Activity			5,395	3.0

* All activities are considered ongoing

Department of Industrial Relations
Office of the Director
Workload Data - AB 1124

Staff Services Manager I

Activity	Hours Per Activity	Projected Workload*		
		Increased Activity		
		AB 1124	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Plans, organizes, and directs the work of subordinate staff (weekly update)	12	52	624	
Supervise, assist, and evaluate subordinate staff's performance and takes or recommends appropriate action (quarterly)	64	4	256	
Assigns routine work and special projects to staff and reviews finished product for accuracy (weekly)	2	52	104	
Develops technical expertise and decision-making skills of subordinate staff (ongoing)	280	1	280	
Provides training for new and existing staff as required; provides ongoing training and technical consultation to staff and the public (monthly)	30	12	360	
Prepares correspondence and reports; conducts special projects (approx. 12 activities per year)	8	12	96	
Perform other related duties	8	12	96	
Total Increased Activity			1,816	1.0

* All activities are considered ongoing

**Department of Industrial Relations
Division of Workers' Compensation
Workload Data - AB 1124 (2016/17)**

Industrial Relations Counsel III (Specialist)

Activity	Hours Per Activity	Projected Workload*		
		Increased Activity		
		AB 1124	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Prepare draft regulations to develop a formulary for medications prescribed in the workers' compensation system; attend working groups with public; revise drafts based on review of public comments (one rulemaking text)	400	1	400	
Prepare initial rulemaking documents; attend public hearing; prepare comment charts (approx 6 iterations)	80	6	480	
Revise proposed regulations; prepare 15 day notice of revisions; review comments to 15 day version; prepare responses to comments (approx 4 rounds)	40	4	160	
Prepare final statement of reasons and final rulemaking documents	50	2	100	
Respond to issues raised by the Office of Administrative Law (2 iterations)	20	2	40	
Oversee posting and announcement of final regulations	40	1	40	
Preparing for meetings, conducting research and coordinating with outside consultants	40	12	480	
Total Increased Activity			1,700	1.0

*These activities are first year activities.

Department of Industrial Relations
 Division of Workers' Compensation
 Workload Data - AB 1124 (2017/18 and ongoing)

Industrial Relations Counsel III (Specialist)

Activity	Hours Per Activity	Projected Workload*		
		Increased Activity		
		AB 1124	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Continually update and maintain the formulary of medications prescribed in the workers' compensation system (ongoing)	375	4	1,500	
Preparing for meetings, conducting research and coordinating with outside consultants (ongoing)	25	12	300	
Total Increased Activity			1,800	1.0

*Activities are ongoing.

DEPARTMENT OF INDUSTRIAL RELATIONS

2016-17 BUDGET CHANGE PROPOSAL

Title: AB 1513: Piece-Rate Compensation			
Division: Office of the Director and the Division of Labor Standards Enforcement			
Fiscal Year	<u>15/16</u>	<u>16/17</u>	<u>17/18</u>
Requested Dollars	\$0	\$117,000	\$0
No. of Positions	0.0	1.0	0.0

BUDGET REQUEST SUMMARY

The Department of Industrial Relations (DIR) requests \$117,000 in Fiscal Year 2016/17 for 1.0 Associate Governmental Program Analyst to implement the requirements of AB 1513 (Chapter 754, Statutes of 2015). AB 1513 establishes rules for compensating piece-rate workers for mandatory breaks and other nonproductive time; and it establishes an amnesty program through which employers can resolve back pay liabilities to piece-rate workers for mandatory breaks and other nonproductive time in exchange for relief from statutory penalties and other damages.

Under this law, DIR will do the following: (1) develop outreach materials and publicize the requirements of the new law; (2) develop an online portal through which to receive notices from employers participating in the amnesty program and then post and maintain a listing of those employers on the department's website [required by subsection (b)(3) of the statute]; (3) process payments through the Unpaid Wage Fund for former employees who cannot be located by their employers [to be offset in whole or in part by administrative fees paid by their employers]; and (4) analyze the number of workers who receive amnesty payments and the amount of those payments to determine the breadth and effectiveness of the amnesty program created by this law¹.

BACKGROUND/HISTORY

The mission of DIR is to promote, protect, and improve the health, safety, and economic well-being of Californians in the workplace. DIR's Division of Labor Standards Enforcement (DLSE) is responsible for enforcing labor standards applicable to most places of employment, including laws pertaining to minimum wages, overtime, frequency of compensation, wage stubs, and the like. The Director of DIR and the Labor Commissioner (Chief of DLSE) are both involved in the interpretation of legal requirements and occasionally are asked to weigh in on major disputes over workplace violations. Through their staff, they also review and investigate claims arising under the Private Attorneys General Act (PAGA).

AB 1513 was an administration response to a major dispute over compensation requirements for workers paid on a piece-rate basis. Two recent court decisions [*Gonzalez v. Downtown LA Motors*, 215 Cal.App.4th 36 (2013), and *Bluford v. Safeway Stores, Inc.*, 216 Cal.App.4th 864 (2013)] found that piece-rate compensation only pays for productive time, and that mandated breaks and other nonproductive work time must be separately compensated. The decisions generated a spate of litigation, including numerous PAGA claims, seeking to recover back pay for other piece-rate workers plus associated penalties and damages. While some employer groups continue to dispute the holdings in these two court cases, there was also a desire among employer and employee

¹ DIR will absorb the costs for the first three activities. A budget augmentation is needed for the fourth item, which is a new activity for DIR and the key component of this proposal.

representatives alike to resolve compensation requirements going forward and create an amnesty plan that would quickly get back pay into the pockets of workers while relieving employers from potentially crippling liabilities for penalties and damages. With the active involvement of the Director of DIR and the Secretary of the Labor and Workforce Development Agency, these representatives came together to help craft the provisions of AB 1513.

STATE LEVEL CONSIDERATIONS

The back payments required under the amnesty plan will generate state income tax withholdings and possibly some additional employment tax contributions that will be payable to the Employment Development Department. The amnesty payments will also have the effect of resolving, or at least substantially undercutting, several existing cases in the state courts, as well as forestalling others from being filed. It should be noted, however, that disputes over either eligibility to participate in the amnesty or compliance with its requirements must be resolved through private litigation in the courts.

JUSTIFICATION

This proposal will enable DIR to fulfill its added responsibilities under AB 1513. In terms of AB 1513's requirements, including pay standards going forward, DIR will be called upon to clarify and publicize the requirements of the law, including through the development of outreach materials such as FAQs, posting information on DIR's website, and speaking to interested groups. This work requires the use of Legal staff to analyze and explain the requirements of the new statute and Communications staff to present this information in an understandable and effective manner and respond to public inquiries. Some technical assistance from DIR's Office of Information Services will also be needed to create a dedicated web page for information on AB 1513.

In terms of AB 1513's amnesty provisions, DIR has three specific responsibilities aside from publicizing the requirements. First, DIR must receive and post notices submitted by employers who intend to participate in the amnesty program. Based on statements made by employer representatives during the bill's development, DIR anticipates that anywhere from several hundred to a few thousand employers will submit these notices. DIR is creating a simple form through which notices can be submitted online, with the information compiled in a database, and an online listing of participating employers generated from that database. Per the requirements of AB 1513, notices will be accepted through July 1, 2016, and the listing will be posted through March 31, 2017.

Second, if employers are unable to locate some of their former employees, the payments due to those employees must be paid to DLSE for deposit in the Unpaid Wage Fund, followed by DLSE's own efforts to locate and pay those workers. This is an existing program for which there will be a spike in activity due to this amnesty program (largely concentrated in the time frame of December 2016 through June of 2017, after which any still undistributed funds would go into the General Fund). This specific cost will be offset in whole or in part by the administrative fee (.5% of payments up to a maximum of \$2,500) that must accompany these payments and be deposited into the Labor Enforcement and Compliance Fund.

Third, DIR will obtain information from employers on the number of workers expected to receive amnesty payments and the amount of those payments. A DIR analyst will use this information and conduct a subsequent survey of participating employers and court records to analyze the reach and effectiveness of AB 1513's amnesty plan in terms of compensating workers and resolving pending litigation or cases that might have been filed but for the provisions of this law. Please see attached workload justification.

OUTCOMES AND ACCOUNTABILITY

The overarching goals of AB 1513 are to resolve contentious litigation in a way that should reach more workers and provide larger and more timely back wage payments than could be expected through that litigation while relieving employers of related liability for penalties and damages for past violations; and to clarify compensation requirements going forward in a way that fully protects the compensation rights of piece-rate workers and curtails future litigation in this area. The effectiveness of AB 1513 in meeting these goals, particularly with respect to the back pay and penalty relief provisions (*i.e.* amnesty plan), is directly dependent upon employer awareness of these provisions within the short time frame provided (11½ months) to submit a notice and make the required payments. DIR's outreach efforts are designed to bring about that awareness; and the internet portal for employer amnesty notices will make it easier both for employers to provide those notices as well as for DIR to list those notices and later assess the effectiveness of the amnesty provisions. (The internet portal option is also less expensive than collecting the notices by hand and then posting them on DIR's website, as specified in the statute.)

Because the bill's amnesty provisions could provide a template for future situations involving court decisions that generate a spate of PAGA litigation, it is important for the Administration to evaluate their effectiveness in meeting the statute's goals and providing any ancillary benefits to the state. In particular, DIR needs to assess the number of workers receiving back wage payments, the amount of those payments, the numbers who could not be reached but for whom payments were made to the Unpaid Wage Fund, and the extent to which the law resolved or curtailed litigation over the compensation rights of piece-rate workers with respect to mandatory breaks and other nonproductive time. After 2016/17, the work associated with the adoption of AB 1513 will be completed, although the knowledge and experience gained through this effort will be transferrable to other programs, including future amnesty plans that may be based on the AB 1513 model.

REVENUE SOURCE FOR REQUEST

Labor Enforcement and Compliance Fund (Fund 3152)

Department of Industrial Relations
Office of the Director
Workload Data - AB 1513

Associate Governmental Program Analyst

Activity	Projected Hours Per Activity	Projected Workload		
		Increased Activity		
		AB 1513	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Coordinate and track receipt of notices	80.0	1	80	
Track, analyze, and draft report on # employees receiving back payments (monthly update)	7.5	12	90	
Track, analyze, and draft report on amount of back payments (monthly update)	7.5	12	90	
Track, analyze, and draft report on numbers of employees and payments going into Unpaid Wage	7.5	12	90	
Coordinate sharing of deliverables and appropriate follow up meetings for posting on website	60.0	1	60	
Assist in identification of indicators and key metrics for ongoing data collection and analysis	175.0	1	175	
Assist in conducting a baseline study of key metrics for assessment	150.0	1	150	
Monitor key metrics to evaluate progress over time, comparing against baseline measures when appropriate for analytical reporting purposes	200.0	1	200	
Submit high level analytical reports on key metrics at regular intervals for executive review (monthly)	27.0	12	324	
Design and maintain database of all metrics related to the formulary	225.0	1	225	
Assist in developing strategic timeline for outreach and education activities and benchmarks, as well as target audiences and related materials	175.0	1	175	
Conduct a comparison of these numbers to overall numbers of employers and employees in affected industries (monthly analysis)	8.0	12	96	
Analyze and present on the effect on litigation over piece-rate compensation issues	75.0	1	75	
Coordinate internal review of all materials for public consumption prior to posting	40.0	1	40	
Ensure high quality in all materials prepared for public posting in coordination with DIR editors, website managers, and technical experts	40.0	1	40	
Use outlook and other reminder tools to ensure deadlines are met and appropriate review times are factored into material development	35.0	1	35	
Perform other related duties	20.0	1	20	
Total Increased Activity			1,965	1.0

DEPARTMENT OF INDUSTRIAL RELATIONS

2016-17 BUDGET CHANGE PROPOSAL

Title: SB 350: The Clean Energy and Pollution Reduction Act of 2015			
Division: Division of Labor Standards Enforcement & Office of the Director – Legal Unit			
Fiscal Year	<u>16/17</u>	<u>17/18</u>	<u>18/19</u>
Requested Dollars	\$816,000	\$773,000	\$434,000
No. of Positions	5.5	5.5	3.5

BUDGET REQUEST SUMMARY

The Department of Industrial Relations (DIR) requests 5.5 positions and \$816,000 in 2016/17, 5.5 positions and \$773,000 in 2017/18, and 3.5 positions and \$434,000 ongoing from the Labor Enforcement and Compliance Fund to implement the provisions of Senate Bill (SB) 350 (Chapter 547, Statutes of 2015).

BACKGROUND/HISTORY

Existing law, under Labor Code section 1720(a)(1) defines "public works" for purposes of the California Prevailing Wage Law as including, among other types of work, the construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds.

SB 350 amended Labor Code 1720 and expanded the definition of what constitutes a "public work" requiring the payment of prevailing wages to include any "construction, alteration, demolition, installation, or repair work on the electric transmission system located in California."

The Director of DIR issues coverage determinations, on request, as to whether a specific project or type of work is a "public work" subject to prevailing wage requirements. As a part of that process, the Director may be tasked with determining whether an exemption applies under a particular set of facts. Using research by the Office of Policy, Research, and Legislation (OPRL) the Director also publishes general prevailing wage determinations in the 58 counties for a variety of job classifications engaged in public works.

Within DIR, the Division of Labor Standards Enforcement's (DLSE) Public Works unit investigates complaints concerning Public Works and Prevailing Wages Laws in California, reviews certified payroll records, issues civil wage and penalty assessments, and verifies that employer payments are properly made to a third party plan, fund or program. The DLSE also assures that the proper classifications were used and the appropriate wage rates paid.

Attorneys from the Office of the Director - Legal Unit (OD-Legal), serve as hearing officers on any appeals from DLSE's civil wage and penalty assessments.

STATE LEVEL CONSIDERATIONS

No other state entities are affected by this proposal with respect to the prevailing wage component of the bill.

JUSTIFICATION

SB 350 expands the definition of what constitutes a public work, adding a substantial new category of work to the Prevailing Wage Law – specifically, work done on electric transmission lines and related equipment done by the major utility companies, many of which are private. In the past, such work may not have been financed by any public funds, and as such, was not covered under Prevailing Wage Law. Going forward, all such projects, regardless of whether any public funding is involved, will be considered “public works” covered under the Prevailing Wage Law. This will create additional administrative and enforcement responsibilities for DIR.

Office of Policy, Research and Legislation (OPRL)

This bill applies to the bulk transmission of electricity, creating an additional category of prevailing wage jobs. Additionally, the amendments further expand prevailing wage requirements to encompass multi-family complexes and commercial projects, adding many more prevailing wage jobs.

Commercial solar is a largely non-union industry with the average installer wage of about \$20 an hour. Every craft that may potentially claim this work has a prevailing wage rate of at least twice that amount. DIR will need to determine the prevailing wage rate for such work via a survey conducted by DIR's OPRL. One Research Program Specialist I (Economics) is required to perform wage surveys and research in the 2016/17 and 2017/18 fiscal years.

Division of Labor Standards Enforcement (DLSE)

DIR estimates that at least 9,000 and as much as 20,000 additional projects could fall under Prevailing Wage Law as a result of SB 350. This would require contractors being subject to registration to submit certified payroll records and for awarding bodies to submit public works project notification to DIR for these projects. The Deputy Labor Commissioner I (DLC I) requested in this proposal will enable DLSE's Public Works unit to investigate up to 65 complaints of contractors who are suspected of underpayment of wages on public works projects covered by this legislation. Investigative staff will be needed to track down project specific information from the funding agency, contractor and building owner as necessary. It is anticipated that DLSE would exert many hours of investigative time for each complaint, which includes initial mailings, witness interviews, obtaining documents, issuing subpoenas, auditing, issuing assessments and handling appeal and settlement hearings.

Temporary Help funding is requested to help support DLSE's attorneys that will be responsible for prosecuting any assessments issued by a DLC I as a result of SB 350. It's anticipated that at least half of the investigations will result in wage and penalty assessments and half of those assessments will be appealed. DLSE's attorneys would need a minimum of 50 hours to review each case, meet with the DLC I, participate in supervised settlement conferences, prosecute cases in administrative hearings, issue court judgments, fight legal challenges if a writ is filed in the administrative hearings, and defend the judgment under any motions to vacate judgments filed.

The 2.5 Office Technicians requested in this proposal will enable DLSE to input up to 9,000 project notifications into the Project Notification System. This work is typically done by public agencies, but DLSE staff will be required to ensure all individual projects are reflected in our on-line project notification application (PWC 100) to allow contractors to submit Certified Payroll Records. In addition, the investigations on these projects will require clerical support to docket cases into our case management system.

Office of the Director – Legal Unit (OD-Legal)

Based on experience, the determination of the wage rate will lead to litigation that will need to be defended by OD-Legal. The scope of coverage of the new legislation will also result in numerous

requests to the Director that will require legal opinions by an attorney in OD-Legal. It is anticipated that the broad and undefined expansion of coverage of the public works laws by this bill will result in many new inquiries by the public including contractors, subcontractors, labor compliance groups and entities responsible for awarding contracts for work on California's electric transmission system. One Industrial Relations Counsel IV is needed during the 2016/17 and 2017/18 fiscal years to work on additional requests for coverage determinations by the Director under Labor Code section 1773.5.

Temporary Help funding is also requested to help support the appeal workload of Hearing Officers in OD-Legal to hear appeals of assessments brought by DLSE under Labor Code sections 1741 and 1742.

See attached workload justification for the positions requested in this proposal.

OUTCOMES AND ACCOUNTABILITY

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Prevailing Wage Determinations		116	116			
Wage & Benefit Surveys		2	2			
Coverage Determinations		50	50			
Public Works Investigations Pursuant to SB 350		65	65	65	65	65
Appealed Wage & Penalty Assessments		15	15	15	15	15
Projects entered into on-line notification application		9,000	9,000	9,000	9,000	9,000

REVENUE SOURCE FOR REQUEST

Labor Enforcement and Compliance Fund (Fund 3152)

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Office of Policy, Research and Legislation
 Workload Data - SB 350 (2016/17 & 2017/18 only)

Research Program Specialist I (Economics)

Activity	Projected Workload			
	Projected Hours Per Activity in 2016-17	Increased Activity		
		SB 350	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Collect, follow-up, and review relevant wage data for determining prevailing wage rates and issue prevailing wage determination ^{1/}	4.00	116	464	
Conduct wage investigations ^{2/}	55.00	6	330	
Conduct wage and benefits survey ^{3/}	250.00	2	500	
Research and draft response to written or electronic correspondence	1.00	550	550	
Handle telephone calls	0.05	3,500	175	
Total Increased Activity			2,019	1.0

1/ An estimated 6 new determinations x 58 counties = 348 determinations, with an estimated 1/3 (116) being updated every year.

2/ A wage investigation averages 50 to 60 hours to complete.

3/ A full wage survey averages 200 to 300 hours each.

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Public Works
 Workload Data - SB 350 (Ongoing)

Deputy Labor Commissioner I

Activity	Historical and Projected Workload							
	Actual Number of Activities*				Projected Hours Per Activity in 2016-17	Increased Activity		
	2010-11	2011-12	2012-13	2013-14		SB 350	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Public Works Investigations	1,405	1,622	1,103	2,617	40.00	65	2,600	
Total Increased Activity					40.00	65	2,600	1.0

* Actual Number of Activities reflects the number of Public Works investigations *opened* annually.

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Public Works
 Workload Data - SB 350 (Ongoing)

Office Technician - Typing

Activity	Projected Workload			
	Projected Hours Per Activity in 2016-17	Increased Activity		
		SB 350	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Ensure that all projects are entered into on-line project notification application in order to allow contractors to submit Certified Payroll Records	0.50	9,000	4,500	
Docket complaint investigations into case management system	0.30	65	20	
Total Increased Activity			4,520	2.5

Department of Industrial Relations
 Division of Administration
 Office of the Director - Legal
 Workload Data - SB 350 (2016/17 & 2017/18 only)

Industrial Relations Counsel IV

Activity	Projected Workload			
	Projected Hours Per Activity in 2016-17	Increased Activity		
		SB 350	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
Coverage Determinations: review of documents, drafting determinations and decisions on appeal and litigation. Includes public contact in-person, by email or phone and outside training.	40.00	50	2,000	
Total Increased Activity	40.00	50	2,000	1.0

DEPARTMENT OF INDUSTRIAL RELATIONS

2016-17 BUDGET CHANGE PROPOSAL

Title: SB 358 & AB 1509: Retaliation Complaints			
Division: Division of Labor Standards Enforcement			
Fiscal Year	<u>15/16</u>	<u>16/17</u>	<u>17/18</u>
Requested Dollars	\$0	\$132,000	\$124,000
No. of Positions	0.0	1.0	1.0

BUDGET REQUEST SUMMARY

The Department of Industrial Relations (DIR) requests 1.0 Deputy Labor Commissioner I and an augmentation of \$132,000 in the first year and \$124,000 ongoing to implement the requirements of Senate Bill (SB) 358 (Chapter 546, Statutes of 2015) which addresses the gender wage gap issue in California and Assembly Bill (AB) 1509 (Chapter 792, Statutes of 2015) which further safeguards employees' rights to engage in protected conduct.

BACKGROUND/HISTORY

Labor Code section 98.6 authorizes the Labor Commissioner, Chief of DLSE, to accept, investigate, and resolve complaints of employment discrimination involving protections guaranteed by the Labor Code, including claims for retaliation for violations of any law under the jurisdiction of the Labor Commissioner. The DLSE Retaliation Complaint Unit (RCU) investigates complaints alleging discriminatory retaliation in the workplace on the basis of various Labor Code sections.

SB 358

Existing law regulates the payment of compensation to employees by employers and prohibits an employer from conditioning employment on requiring an employee to refrain from disclosing the amount of his or her wages; it generally prohibits an employer from paying an employee at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work for jobs requiring equal skill, effort and responsibility which are performed under similar working conditions. Existing law establishes exceptions to that prohibition where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.

The gender pay gap is a longstanding issue in the workforce and the discussion has become elevated nationally in the last few years. Based on legislative analysis, in 2013 the gender wage gap in California stood at 16 cents on the dollar. A woman working full-time year-round earned an average of 84 cents to every dollar a man earned. This wage gap extends across almost all occupations reporting in California. While the state's overall wage gap is slightly lower than the national average of 77 cents to the dollar, the persistent disparity in earnings still has a significant impact on the economic security and welfare of millions of working women and their families. Collectively, women working full-time in California lose approximately \$33 billion each year due to the gender wage gap.

In 1949, California enacted Labor Code section 1197.5 to address the segregation of women into historically undervalued occupations. The provision has evolved over the last four decades so that it is now virtually identical to the federal Equal Pay Act (EPA) of 1963 (29 U.S.C. Sec. 206(d)).

However, the state provisions are rarely utilized because many loopholes make it nearly impossible to establish a successful claim.

SB 358 will contribute to the elimination of the gender wage gap in California by:

- Ensuring that employees performing substantially equal work are paid fairly by requiring equal pay for “substantially similar work when viewed as a composite of skill, effort and responsibility”.
- Clarifying the employee’s and employer’s burdens of proof under the EPA.
- Preventing reliance under the EPA on irrelevant and ill-defined “factors other than sex” to justify unfair pay differentials by replacing the “bona fide factor other than sex” catch-all defense and instead requires the employer to demonstrate that the pay differential is appropriate under specified valid criteria, such as merit or a seniority system.
- Ensuring that any legitimate, non-sex related factor(s) relied upon are applied reasonably and account for the entire pay differential.
- Discouraging pay secrecy by explicitly prohibiting retaliation or discrimination against employees who disclose, discuss, or inquire about their own or co-workers’ wages for the purpose of enforcing their rights under the EPA.

DIR considers this legislation to be positive given California has prohibited gender-based pay discrimination since 1949. Claimants asserting rights under Labor Code section 1197.5 have rarely been able to successfully utilize those protections due to the current statute’s restrictive framework making it nearly impossible to establish a successful claim. SB 358 strengthens protections for employees to uncover discrepancies in wage and working conditions through sharing of information with each other.

AB 1509

Existing law prohibits an employer from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against any employee or applicant for employment because the employee or applicant has engaged in protected conduct. AB 1509 adds provisions to California Labor Code anti-retaliation statutes making clear that complaints to certain types of employers, including client employers and general contractors over an employee’s direct employer, are protected. Additionally, this bill protects workers whose family members make protected complaints.

The DLSE has maintained, and courts have upheld, that making a complaint to an employer, even if that individual is not the employee’s direct employer, is a protected activity. DLSE has also interpreted the law to encompass workers whose relatives engage in protected activity as being protected from retaliation, an interpretation supported by federal appellate court holdings regarding the application of federal anti-retaliation statutes. Despite this, there are instances of superior or federal courts failing or refusing to follow these principles, creating a need to codify federal appellate court interpretation to ensure consistency in application of the law.

AB 1509 codifies DLSE and federal appellate court interpretation regarding the extent of anti-retaliation protections as applied to certain employers and family members. These clarifications are necessary to ensure consistency in the application of the law throughout the state.

Workload History

Workload Measure	2010	2011	2012	2013	2014	Est. 2015
Retaliation Complaint Investigations	1,175	1,018	1,206	1,270	1,508	1,508

STATE LEVEL CONSIDERATIONS

The proposal is not anticipated to impact other departments.

JUSTIFICATION

The average retaliation case requires approximately 128 hours of total staff time to resolve with the Deputy Labor Commissioner I's time being impacted the most (average 90 hours per case). DLSE anticipates SB 358 will create an additional workload of 15 cases the first year and then a 10% increase in each subsequent year as awareness of SB 358 increases. DLSE anticipates AB 1509 will create an additional workload of 14 cases per year. Please see attached workload justification.

OUTCOMES AND ACCOUNTABILITY

Projected Outcomes

Workload Measure	15/16	16/17	17/18	18/19	19/20	20/21
SB 358 Retaliation Complaint Investigations	n/a	15	17	19	21	23
AB 1509 Retaliation Complaint Investigations	n/a	14	14	14	14	14

REVENUE SOURCE FOR REQUEST

Labor Enforcement and Compliance Fund (Fund 3152)

Department of Industrial Relations
Division of Labor Standards Enforcement
Retaliation Complaint Investigation
Workload Data - SB 358 & AB 1509

DEPUTY LABOR COMMISSIONER I

Activity	Historical and Projected Workload								
	Actual Number of Activities*					Average Hours Per Activity in 2014-15	2016/17 Increased Activity**		
	2010	2011	2012	2013	2014		SB 358 & AB 1509	Associated Annual Hours	Additional Staff Requested (1,776 hours per position)
Retaliation Complaint Investigation	1,175	1,018	1,206	1,270	1,508	90.00	29	2,610	
Total Increased Activity						90.00	29	2,610	1.0

* Reflects the number of RCI cases resolved/closed in a given calendar year.

** DLSE estimates that SB 358 and AB 1509 will generate an additional 29 retaliation complaint investigations in the first year with a 10% growth projected in each subsequent year for SB 358 related complaints.

DEPARTMENT OF INDUSTRIAL RELATIONS

2016-17 BUDGET CHANGE PROPOSAL

Title: SB 588: Nonpayment of Wages and Judgment Enforcement			
Division: Division of Labor Standards Enforcement			
Fiscal Year	<u>16/17</u>	<u>17/18</u>	<u>17/18</u>
Requested Dollars	\$1,865,000	\$1,750,000	\$1,070,000
No. of Positions	13.0	13.0	9.0

BUDGET REQUEST SUMMARY

The Department of Industrial Relations (DIR) requests 13.0 positions and an augmentation of \$1.9 million in Fiscal Year 2016/17, with 13.0 positions and \$1.8 million in 2017/18 and 9.0 positions and \$1.1 million ongoing to support the Division of Labor Standards Enforcement's (DLSE) efforts in the implementation of Senate Bill 588 (Chapter 803, Statutes of 2015). To accomplish this, DIR plans to hire 1.5 Deputy Labor Commissioner II, 6.0 Deputy Labor Commissioner I, 1.5 Office Technician, 3.0 Industrial Relations Counsel III (two-year limited-term funding), and 1.0 Legal Secretary (two-year limited-term funding).

BACKGROUND/HISTORY

SB 588 provides additional tools for the Labor Commissioner, Chief of DLSE, to enforce against employers who fail to satisfy a final judgment relating to the nonpayment of wages to employees. This bill authorizes the Labor Commissioner to levy upon the employer's bank accounts, accounts receivable, and real and personal property, as specified and provide for third-party claims to the property. A levy is a legal seizure of property to satisfy a debt. Levies differ from liens in that a lien is a claim used as security for the tax debt, whereas a levy actually takes the property to satisfy the tax debt. Levies are also distinguished from wage garnishments in that levies are enforced against financial accounts while garnishments are enforced against a debtor's wages or paycheck. Levies have long been used by tax agencies such as the Internal Revenue Service (IRS), along with other revenue collecting government agencies. SB 588 gives the Labor Commissioner the same authority and ability to levy an employer's bank accounts and other personal property that is already authorized for the Franchise Tax Board (FTB), State Board of Equalization (BOE), and The Employment Development Department (EDD).

The Labor Commissioner's current process to order a levy on an employer's account post-judgment is lengthy and burdensome. Under existing law, the Labor Commissioner must first get a writ of execution from the superior court and then issue instructions to the county sheriff to serve that writ (a levy) on the bank in order to satisfy the judgment. This process requires the Labor Commissioner and the aggrieved employee to follow the superior court's administrative procedures, followed by the sheriff's administrative procedures, before waiting for the sheriff to serve the levy. The entire process can take upwards of 6 months, providing ample time for a debtor to hide or move assets. SB 588 allows the Labor Commissioner to directly order the bank to turn over the accounts belonging to employers who have an unsatisfied wage judgment against them.

SB 588 also authorizes the Labor Commissioner to issue a Stop Order against the employer and prohibit the continuation of employee labor until the employer posts a bond, as specified. This bill also prohibits the renewal of the license of a long-term care facility that fails to satisfy the judgment after the time to appeal has expired. This bill makes entities contracting with the employer for

property services (janitorial, security guard, valet parking, landscaping, and gardening) and long-term care facility industries jointly and severally liable for the unpaid judgment, as specified.

DLSE's Bureau of Field Enforcement (BOFE) conducts inspections of industries to ensure compliance with the Labor Code. The Labor Commissioner is charged with identifying priority areas for field investigations. BOFE's primary responsibility is to administer and enforce statutes and regulations within the jurisdiction of the division through field investigations (Labor Code § 90.5) and the Labor Commissioner may prosecute all actions for the collection of wages, penalties and demands of persons who are financially unable to employ counsel (Labor Code § 98.3). Following an investigation, DLSE's legal staff may bring an action for recovery of wages, penalties, or injunctive relief after an employer fails to comply with the Labor Code provisions upon demand by BOFE.

BOFE may also issue citations and penalty assessments for violations of specific laws where a citation is authorized. A citation is subject to an administrative appeal and hearing before a hearing officer in DLSE's Wage Claim Adjudication unit who issues a determination which is subject to review in the courts under a writ of mandate (Labor Code § 1197.1).

DLSE's Judgment Enforcement Unit (JEU) handles collection efforts for the division, including obtaining judgments and liens against employers with unpaid determinations and citations.

STATE LEVEL CONSIDERATIONS

N/A

JUSTIFICATION

SB 588 is comprehensive legislation affecting multiple DLSE units and was intended to enhance DLSE's ability to recover unpaid wages through a variety of methods, such as the issuance of levies, Stop Orders, bond penalty citations as well as employer liens.

Based on the number of judgments issued annually, the DLSE estimates that it will issue 1,100 levies annually with the passage of SB 588, requiring 2.0 Deputy Labor Commissioner I (DLC I) and 1.0 Office Technician (OT) in the JEU.

If wage judgments are not satisfied within 30 days, an employer must obtain a bond as specified in SB 588. If the employer then fails to post the bond on the unsatisfied judgment, the matter would be referred to DLSE's Bureau of Field Enforcement (BOFE) for further enforcement action. BOFE deputies would then obtain information to confirm that the employer is still operating its business in violation of the requirement to post a bond. Once it is confirmed that the employer is still using employee labor, BOFE deputies would then issue the stop order to cease doing business, along with a citation for the penalty assessment for failing to post the bond. DLSE estimates that most employers who refuse or are unable to satisfy their judgment will also not voluntarily post bond in response to a demand letter. Stop Orders will need to be pursued on an estimated 828 (approximately 75%) employers annually in response. This will require 3.0 DLC I in BOFE to investigate these employers, including time for travel, surveillance, confirmation that the business is still operating, and issuance of a penalty citation.

It is estimated that approximately 440 Stop Order and Bond citations will be appealed annually, requiring a hearing to determine that employer is the verifying legal entity, that the employer is conducting business operations in violation of the requirement to post a bond, and that there is an unsatisfied judgment. This will require 1.0 additional DLC I and 0.5 OT in BOFE for processing, case preparation and presentation of supporting evidence. In addition, 1.5 Deputy Labor Commissioner IIs in DLSE's Wage Claim Adjudication unit are required to conduct the appeal hearings.

Employers that continue to operate in violation of a stop order and bond-posting requirement are referred to DLSE attorneys for the purpose of filing a civil action. It is assumed that 572 (approximately 70%) of the stop orders will require further legal enforcement requiring 3.0 Industrial Relations Counsel III positions to process court filings, including review of facts and records, prepare response to file and opposition brief, present evidence at hearings, and preparation of judgments. A Legal Secretary in JEU will also be necessary to open and maintain the file, obtain transcripts, assemble administrative record, prepare correspondence and file documents with the court clerk. The funding for these 4.0 positions is requested on a two-year limited-term basis while the magnitude and benefit of these court filings can be determined.

Every step taken to collect on these judgments will require documentation in the case file. The documentation of case notes takes time and can be labor intensive; however it is required in order to protect the integrity of the judgment enforcement process and the due process rights of the defendants. See attached workload justification for all positions requested.

OUTCOMES AND ACCOUNTABILITY

Projected Outcomes

Workload Measure	CY	BY	BY+1	BY+2	BY+3	BY+4
Levy Issuance	0	1,100	1,100	1,100	1,100	1,100
Field Investigations/Stop Orders	0	828	828	828	828	828
Legal Enforcement	0	572	572	572	572	572
Citations Appealed	0	440	440	440	440	440

REVENUE SOURCE FOR REQUEST

Labor Enforcement and Compliance Fund (Fund 3152)

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Judgment Enforcement Unit
 Workload Data - SB 588

DEPUTY LABOR COMMISSIONER I

Activity	Projected Workload			
	Projected Hours Per Activity	Increased Activity		
		SB 588	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
<u>Judgment Enforcement Unit:</u>				
Levy Issuance (Investigate/Uncover Employer Assets)	3.00	1,100	3,300	
Total Increased Activity	3.00	1,100	3,300	2.0

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Judgment Enforcement Unit
 Workload Data - SB 588

OFFICE TECHNICIAN (TYPING)

Activity	Projected Hours Per Activity	Projected Workload		
		Increased Activity		
		SB 588	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
<u>Judgment Enforcement Unit/Cashiering:</u>				
Levy Issuance (prepare, mail and serve)	1.00	1,100	1,100	
Process Checks and Payments	1.00	847	847	
Total Increased Activity			1,947	1.0

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Judgment Enforcement Unit
 Workload Data - SB 588 (2-Year Limited-Term Funding)

INDUSTRIAL RELATIONS COUNSEL III

Activity	Projected Hours Per Activity	Projected Workload		
		Increased Activity		
		SB 588	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
<u>Judgment Enforcement Unit:</u> Citation Processing (review facts of case, prepare response for filing, review administrative record, prepare opposition brief, attend court hearing, prepare judgment, make legal determinations)	9.00	572	5,148	
Total Increased Activity	9.00	572	5,148	3.0

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Judgment Enforcement Unit
 Workload Data - SB 588 (2-Year Limited-Term Funding)

LEGAL SECRETARY

Activity	Projected Hours Per Activity	Projected Workload		
		Increased Activity		
		SB 588	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
<u>Judgment Enforcement Unit:</u> Citation Processing (open and maintain file, obtain court reporter's transcript, assemble administrative record, prepare correspondence, file documents with court clerk)	3.00	572	1,716	
Total Increased Activity	3.00	572	1,716	1.0

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Bureau of Field Enforcement
 Workload Data - SB 588

DEPUTY LABOR COMMISSIONER I

Activity	Projected Workload			
	Projected Hours Per Activity	Increased Activity		
		SB 588	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
<u>Bureau of Field Enforcement:</u>				
Field Investigation (surveillance, issuance of citation, travel, file documentation)	5.50	828	4,554	
Appeals (assist w/ preparation of case and presentation of supporting evidence)	5.00	440	2,200	
Total Increased Activity			6,754	4.0

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Bureau of Field Enforcement
 Workload Data - SB 588

OFFICE TECHNICIAN (TYPING)

Activity	Projected Hours Per Activity	Projected Workload		
		Increased Activity		
		SB 588	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
<u>Bureau of Field Enforcement:</u>				
Appeals (process, file, route, etc.)	2.00	440	880	
Total Increased Activity	2.00	440	880	0.5

Department of Industrial Relations
 Division of Labor Standards Enforcement
 Wage Claim Adjudication
 Workload Data - SB 588

DEPUTY LABOR COMMISSIONER II

Activity	Projected Hours Per Activity	Projected Workload		
		Increased Activity		
		SB 588	Associated Annual Hours	Additional Staff Needed (1,776 hours per position)
<u>Wage Claim Adjudication:</u>				
Conduct Appeal Hearings	6.00	440	2,640	
Total Increased Activity	6.00	440	2,640	1.5